



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vancouver Management Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession based on unpaid rent, to obtain monetary compensation for unpaid rent, and to recover the filing fee paid for the application.

This decision is written based on the Application for Dispute Resolution, evidence, and submissions provided by the landlord on January 12, 2022.

The landlord submitted a signed Proof of Service Notice of Direct Request Proceeding which declares that on January 25, 2022, the landlord sent the tenant the Notice of Dispute Resolution Proceeding - Direct Request by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this mailing.

Based on the written submissions of the landlord and in accordance with sections 89 and 90 of the *Act*, I find that the Direct Request Proceeding documents were served on January 25, 2022 and are deemed to have been received by the tenant on January 30, 2022, the fifth day after their registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 67 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

### Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on July 22, 2021, indicating a monthly rent of \$1,580.00, due on the first day of each month for a tenancy commencing on August 1, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the August 10 Day Notice) dated August 9, 2021, for \$1,580.00 in unpaid rent. The August 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of August 19, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the November 10 Day Notice) dated November 10, 2021, for \$1,605.00 in unpaid rent. The November 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of November 21, 2021
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the January 10 Day Notice) dated January 11, 2022, for \$2,740.00 in unpaid rent. The January 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of January 21, 2022
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the January 10 Day Notice was posted to the tenant's door at 3:20 pm on January 11, 2022
- A Direct Request Worksheet and ledger showing the rent owing and paid during the relevant portion of this tenancy

### Analysis

In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and that such evidentiary material does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies

that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

#### Previous 10 Day Notices

In this type of matter, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 71(2)(a) and 88 of the *Act*. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

- registered mail receipt and printed tracking report;
- a receipt signed by the tenant, stating they took hand delivery of the document(s); or
- a witness statement that they saw the landlord deliver the document(s).

The landlord submitted a copy of an August 10 Day Notice and a November 10 Day Notice. However, I find the landlord has not submitted a copy of the registered mail receipts or Proof of Service Notice to End Tenancy forms containing the signature of a witness, or of the person who received the 10 Day Notices, to confirm service of the August and November 10 Day Notices to the tenant.

I find I am not able to confirm service of the August or November 10 Day Notices to the tenant. For this reason, I cannot consider the previous 10 Day Notices in this Application for Dispute Resolution by Direct Request.

#### December 10 Day Notice

In their Application for Dispute Resolution by Direct Request, the landlord has indicated they served the tenant a 10 Day Notice on December 14, 2021, by attaching it to the door.

However, I find the landlord has not submitted a copy of the December 10 Day Notice. The landlord also has not submitted a copy of a Proof of Service Notice to End Tenancy form containing the signature of a witness to confirm service of the December 10 Day Notice to the tenant.

For these reasons, I find cannot consider the December 10 Day Notice in this Application for Dispute Resolution by Direct Request.

#### January 10 Day Notice

Section 46 (4) of the *Act* states that within five days of a tenant receiving the 10 Day Notice, the tenant may either pay the rent or dispute the 10 Day Notice.

In accordance with sections 88 and 90 of the *Act*, I find that the January 10 Day Notice was served on January 11, 2022 and is deemed to have been received by the tenant on January 14, 2022, three days after its posting.

I find that the fifth day for the tenant to have either paid the rent or disputed the notice was January 19, 2022. I further find that the earliest date that the landlord could have applied for dispute resolution was January 20, 2022.

I find that the landlord applied for dispute resolution on January 12, 2022, before the last day that the tenant had to dispute the January 10 Day Notice and that the landlord made their application for dispute resolution too early.

For this reason, I find I cannot consider the January 10 Day Notice in this Application for Dispute Resolution by Direct Request.

Therefore, the landlord's application for an Order of Possession for unpaid rent is dismissed with leave to reapply.

I note that monetary compensation in a Direct Request Proceeding is only awarded in relation to a 10 Day Notice that is upheld. As the landlord was not successful in obtaining an Order of Possession for unpaid rent, the landlord's application for a Monetary Order for unpaid rent is also dismissed with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I dismiss the landlord's application for an Order of Possession and a Monetary Order for unpaid rent with leave to reapply.

I dismiss the landlord's application to recover the filing fee paid for this application without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 09, 2022

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Residential Tenancy Branch